IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1906 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STAT ROAD TRANSPORT CORPORATION

Versus

MAHENRASINH Y GOHIL

Appearance:

1. Special Civil Application No. 1906 of 1994

MR HS MUNSHAW for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/02/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner. In this petition, the petitioner has challenged the award made by the labour court, Ahmedabad

in Reference No. 1895 of 1988 dated 30th June, 1993 wherein the labour court has set aside the dismissal order dated 4th June, 1982 and has granted reinstatement without back wages for the intervening period with continuity of service. Initially, this court issued rule on 9th February, 1994 and has granted ad.interim relief to the effect that the respondent, if reinstated, shall be posted to non sensitive post and if not reinstated, then, to be reinstated and posted at non sensitive post.

Learned advocate Mr. Munshaw appearing for the petitioner has submitted that in view of the order passed by this court while admitting this petition, the respondent workman has already been reinstated in the year 1994 and thereafter he was working with the petitioner corporation but subsequently, he remained absent from 17th May, 1995 and in view of the misconduct of his having remained absent without prior permission, ultimately, the respondent was dismissed from service by order dated 12th September, 1995. He has also produced a copy of the order dated 12th September, 1995 whereunder the respondent workman has again been dismissed from service. Same is ordered to be taken on record.

Before the labour court, the allegation against the respondent was to the effect that after completion of duty, the respondent has to deposit cash with the corporation but he has not deposited the cash for three days' period and that amount has been lying with the respondent for three days and thereby, the respondent workman has misappropriated the fund of the corporation. Before the labour court, no oral evidence was led by the either of the side and the petitioner corporation has produced documentary evidence and thereafter, the labour court has considered the merits of the matter that the respondent workman has completed 19 years' service with the corporation and there was no past record produced before the labour court and considering the fact that the misconduct alleged was his first misconduct while keeping in mind his past 19 years' service, the labour court found that the punishment of dismissal was harsh and therefore, denial of full back wages for a period of about more than eleven years has been considered as sufficient punishment and has, therefore, granted reinstatement without continuity of service.

Now, in this petition, in view of the statement made by Mr. Munshaw, learned advocate for the petitioner, there is no question of entering into the merits because in view of the award made by the labour court, the respondent workman has already been reinstated in service

and thereafter, he has been dismissed again on 12th September, 1995 and, therefore, according to my opinion, present petition has become infructuous and is, therefore, disposed of as such. Rule is accordingly discharged with no order as to costs.

21.2.2002. (H.K. Rathod,J.)

Vyas